

<sup>2</sup> The Board notes that following the June 25, 2018 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

of proof to establish continuing disability after September 30, 2017 causally related to his accepted employment-related injuries.

### **FACTUAL HISTORY**

On February 12, 2007 appellant, then a 53-year-old passport clerk, filed a traumatic injury claim (Form CA-1), under OWCP File No. xxxxxx682, alleging that the repetitive motions of reaching and bending while processing passports aggravated his right shoulder. At that time, he had been working in a rehabilitation position since August 21, 2006 under OWCP File No. xxxxxx288.<sup>3</sup> OWCP accepted the present claim for right shoulder calcifying tendinitis and injury to right median nerve.<sup>4</sup> Appellant stopped work on April 9, 2007 and has not returned.<sup>5</sup> OWCP paid him wage-loss compensation benefits on the periodic rolls commencing May 13, 2007.

In a February 28, 2017 report, Dr. Bernard Crowell, an orthopedic surgeon, diagnosed calcific tendinitis right shoulder and right shoulder rotator cuff tear. In February 16 and March 16, 2017 duty status reports (Form CA-17), he noted that appellant, a modified city carrier (rehabilitation clerk), had calcified tendinitis from a February 6, 2007 work injury. The physical requirements of the modified position included lifting 15 pounds continuously and 70 pounds intermittently.

On April 26, 2017 OWCP referred appellant for a second opinion examination, along with a statement of accepted facts (SOAF),<sup>6</sup> a set of questions, and the medical record to Dr. William F. Blankenship, a Board-certified orthopedic surgeon, to determine whether he was able to return to work as a rehabilitation/passport clerk and whether he continued to have residuals of his accepted conditions.

In a May 23, 2017 report, Dr. Blankenship reviewed the SOAF and the medical record and performed an examination of appellant's right shoulder. He related that appellant had no atrophy, but had crepitus in carrying out limited motion. Dr. Blankenship opined that, while appellant had active residuals from the conditions he had since 1992, he could perform the rehabilitation/passport clerk position. As there was no current clinical or diagnostic findings available, Dr. Blankenship recommended that a repeat magnetic resonance imaging (MRI) scan be performed.

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<sup>3</sup> Under OWCP File No. xxxxxx288, OWCP accepted that on July 29, 1992 appellant, then a letter carrier, sustained right shoulder tendinitis. Appellant underwent an authorized arthroscopic subacromial decompression and rotator cuff debridement on August 18, 1993. He returned to work in a rehabilitation/passport clerk position.

<sup>4</sup> On March 9, 2007 appellant also filed an occupational disease claim (Form CA-2) alleging that the duties of the passport clerk position aggravated his right shoulder condition. Under OWCP File No. xxxxxx375, OWCP accepted a right shoulder calcifying tendinitis condition.

<sup>5</sup> OWCP administratively combined OWCP File Nos. xxxxxx288, xxxxxx682, and xxxxxx375, with File No. xxxxxx288 serving as the master file.

<sup>6</sup> The April 24, 2017 SOAF noted that the job requirements of the rehabilitation/passport clerk position were simple grabbing, up to 8 hours not to exceed one pound with the right hand, sitting up to 8 hours per day, standing/walking up to 4 hours per day; bending occasional up to 30 minutes per day, lifting up to 2 hours per day with right hand and lifting up to 8 hours per day with left hand, and reaching above shoulder 0 to 20 minutes per day.

On July 14, 2017 OWCP notified appellant that it proposed to terminate his wage-loss compensation as the weight of the medical evidence, as represented by the report of Dr. Blankenship, established that he no longer had continued disability from work as a result of his work residuals. It afforded him 30 days to submit additional evidence or argument if he disagreed with the proposed action.

In an August 7, 2017 statement, appellant disagreed with OWCP's proposed termination. He noted that he had tried to return to work many times before, but the employing establishment refused to give him a proper Form CA-17 for the rehabilitation/passport specialist position. Appellant argued that Dr. Crowell was not provided with the physical requirements of his rehabilitation/passport specialist position. He also questioned whether the rehabilitation/passport position still existed.

Appellant submitted additional medical evidence including a July 27, 2017 report, Dr. Harold B. Betton, a Board-certified family practitioner, noted that he had been trying to return appellant to work since 2014, but the employing establishment had refused to allow appellant to return to work.

In an August 1, 2017 report, Dr. Crowell explained that a right shoulder MRI scan performed two years ago showed a partial-thickness rotator cuff tear, impingement syndrome rotator cuff, and right shoulder rotator cuff tendinitis. He agreed that a repeat MRI scan right shoulder was warranted. Requests for authorization of a right shoulder MRI scan and additional progress reports were received.

By decision dated September 29, 2017, OWCP terminated appellant's wage-loss compensation benefits, effective September 30, 2017. It found that the report from Dr. Blankenship constituted the weight of the evidence and established that appellant was capable of performing the physical requirements of a rehabilitation/passport specialist position. OWCP noted that the claim remained open for medical benefits.

On January 23, 2018 appellant requested reconsideration. In statements dated January 28 and February 19, 2018, he indicated that his conditions remained active with residuals. Appellant asserted that the employing establishment had made no effort to return him to work.

In an August 4, 2017 note, Dr. Crowell indicated that he was never made aware of the job requirements for a rehabilitation/passport specialist. He reviewed Dr. Blankenship's report and agreed that a repeat MRI scan was warranted.

In a January 8, 2018 report, Dr. Betton reported examination findings and provided an assessment of calcific tendinitis of the shoulder. He indicated that appellant's condition was permanent and stationary. Dr. Betton noted that appellant's disability had not ceased. He also noted that he concurred with Dr. Blankenship's May 23, 2017 and Dr. Crowell's August 4, 2017 notes. In his January 8, 2018 work capacity evaluation (Form OWCP-5c), Dr. Betton indicated that appellant had permanent restrictions. This included a two-hour limit for reaching for the left side and no reaching for the right side.

In a January 18, 2018 report, Dr. Crowell provided an assessment of glenohumeral arthritis right shoulder, acromioclavicular joint arthritis, and tendinitis rotator cuff right shoulder. He

reported that the MRI scan indicated that appellant had posture arthritis affecting the right shoulder and the acromioclavicular joint and, as a result, he was permanently restricted from overhead duties for his right shoulder. In a January 18, 2018 Form OWCP-5c work capacity evaluation, Dr. Crowell indicated that maximum medical improvement had been reached and that appellant was capable of working a full-time sedentary job with restrictions, which included no reaching or reaching above the shoulder.

In duty status reports (Form CA-17), dated February 28, March 27, and April 26, 2018, Dr. Betton indicated that appellant was able to work with restrictions.

By decision dated June 25, 2018, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT - ISSUE 1**

Once OWCP has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>7</sup> Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>8</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>9</sup>

### **ANALYSIS - ISSUE 1**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation effective September 30, 2017.

OWCP accepted appellant's claim for right shoulder calcifying tendinitis and injury to the right median nerve. It subsequently terminated his wage-loss compensation, effective September 30, 2017, based on the report of Dr. Blankenship, a Board-certified orthopedic surgeon serving as a second opinion examiner.

Dr. Blankenship opined in his May 23, 2017 report that while appellant had active residuals from his 1992 conditions, he could perform the rehabilitation/passport clerk position. Dr. Blankenship also however recommended a repeat MRI scan as there was no current clinical or diagnostic findings of record. OWCP, however, disregarded Dr. Blankenship's recommendation for a repeat MRI scan.

Once it undertook development of the medical evidence, OWCP had the responsibility to do so in a manner that would resolve the relevant issues in the case.<sup>10</sup> As such, it should have

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<sup>7</sup> See *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *A.C.*, Docket No. 16-1670 (issued April 6, 2018); *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>8</sup> *Id.*

<sup>9</sup> *R.P.*, Docket No. 17-1133 (issued January 18, 2018).

<sup>10</sup> See *R.B.*, Docket No. 14-1043 (issued December 12, 2014); *V.H.*, Docket No. 14-0433 (issued July 3, 2014).

obtained a supplemental report from Dr. Blankenship, after he had secured and reviewed the recommended MRI scan.<sup>11</sup>

As OWCP did not complete the development of the medical record as recommended by Dr. Blankenship, the Board finds that has not met its burden of proof to terminate appellant's wage-loss compensation, effective September 30, 2017.<sup>12</sup>

### **CONCLUSION**

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective September 30, 2017.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2018 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 27, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> See *G.R.*, Docket No. 16-0455 (issued December 13, 2016); see e.g., *Glenn P. Buckmann*, Docket No. 96-356 (issued December 5, 1997) (where the Board remanded the case for a clarifying opinion from the impartial medical examiner as both he and the second opinion physician before him had indicated that further diagnostic testing was warranted before assessing whether appellant had sustained an employment-related injury. However, OWCP had denied appellant's claim for an employment-related injury prior to obtaining the requested testing. The Board found, therefore, that OWCP was obligated to undertake further development of the evidence).

<sup>12</sup> Due to the disposition of issue one, issue two is moot.